

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

August 27, 2003

**I.
PLEDGE OF
ALLEGIANCE**

Chair **Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu
Absent: None
Staff: Faubion, Judd, Heyden, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair **Nitafan** invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Don Peoples, owner at 529 S. Main Street and President of the Downtown Association, invited the public on September 4, 2003 at the City Hall Community room to hear a staff presentation on the relocation of the library to Main Street and the proposal of 280 homes to be built near the Great Mall by RGC.

**IV.
APPROVAL OF MINUTES
August 13, 2003**

Chair **Nitafan** called for approval of the minutes of the Planning Commission meeting of August 13, 2003.

Staff and **Commissioner Sandhu** made a correction to page 3 of the minutes and changed the following sentence to read: *Kit Faubion, City Attorney, said that Commissioner Sandhu will have to abstain from voting if he lives within 500 feet of the property. Commissioner Sandhu recused himself and left the dais at 7:40 p.m.*

Commissioner Galang made a correction to page 11 of the minutes and changed the following sentence to read: *Commissioner Galang suggested that if it is possible that the quiet study room be placed at the back, not near the front main entrance door and Mr. Rogge said that it would be considered as an option.*

Motion to approve the minutes with the changes.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu) – For Variance No. P-VA2003-2 and “S” Zone Amendment No. P-SA2003-61.

**V.
ANNOUNCEMENTS**

Commissioner **Sandhu**, on behalf of the Sikh Foundation of Milpitas, invited the public to attend “Cultural night” on August 30, 2003 at the Milpitas Community Center. General admission is \$10.00.

Commissioner Giordano announced she attended an informative workshop hosted by the Urban Land Institute, and brought back handouts on inclusionary housing, mixed-use development and transit-oriented development. She plans on attending another workshop on financial funding for infrastructures.

Commissioner Lalwani announced a seminar on "Raising teens with love and understanding" that will be held on August 31, 2003 from 3 p.m. to 5 p.m. at the India Community Center. Speakers are Steve Saso, a high school teacher and counselor and Commissioner Sandhu, father of three.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item No. 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item No.3.

There were no speakers from the audience.

**Close Public Hearing
Item No. 3**

Motion to close the public hearing on Consent Item No. 3.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item No. 3

***3 "S" ZONE AMENDMENT NO. P-SA2003-103 AND USE PERMIT NO. P-UP2003-30:** A request to construct a 3,000 square foot modular building to house classrooms for senior activities in conjunction with the existing interim Senior Center, including new landscaping, trash enclosure and development standard deviations at 540 S. Abel Street - zoned MXD, Mixed Use (APN 86-10-025). Applicant: City of Milpitas. Project Planner: Staci Pereira, (408) 586-3278. CP#8151. *(Recommendation: Approval with conditions)*

M/S: Hay/Giordano

AYES: 7

NOES: 0

VIII. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 1.

1. VARIANCE NO. P-VA2003-2 AND "S" ZONE AMENDMENT NO. P-SA2003-61: *(Continued from June 25, 2003)* A request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court. *Applicant: Franklin and Celina Camillo.*

Annelise Judd, Assistant Planner, presented Variance No. P-VA2003-2 and "S" Zone Amendment No. P-SA2003-61, a request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court.

Ms. Judd noted that the existing improvements include a flagstone patio, elevated wood decking, a dog kennel, a basketball court, decorative water fountain, tool shed, built in barbeque grill with a trellis, seating area and retaining walls. The applicant is requesting that the impervious square footage associated with the extraneous driveway area be deducted. Staff does not support the other cited hardships, but is in support of deducting the extraneous driveway area from the site's impervious area total, thus, presenting a possibility for the site to keep some of the existing back yard amenities. However, staff does not support the variance request in its entirety. Therefore, staff recommends closing the public hearing and recommending denial to the City Council.

Regarding the variance, **Commissioner Hay** asked if the applicant complies with removing part of the existing impervious area, would a variance not be necessary. Ms. Judd replied that they would still need a variance to address deducting the extraneous driveway area.

Commissioner Giordano commented that the definition of impervious surfaces implies that it is something impenetrable and is not open. She asked if a raised wood deck would fall under this category. Ms. Judd replied that an interpretation by the Council in 1994 concluded that wood decking creates a visual manifestation and is to be counted as impervious area.

Commissioner Giordano commented that when the Council looked at the specific decking back in 1994, it seemed that the decking was more of a visual impact. She asked staff if the deck could be looked at as being a non-visual impact since it is in a non-visual impact area behind the house. Ms. Judd replied that the Commission could recommend such an interpretation to the City Council.

In response to Commissioner Giordano's question, Ms. Judd replied that if the deck were to be removed from the impervious surface area, the number of square footage left would be 440 square feet.

Tambri Heyden, Acting Planning and Neighborhood Services Director, commented that a percentage of the wood deck is still considered impervious area because rainwater cannot penetrate it.

Commissioner Giordano needed clarification on why a raised open deck was never included in the hillside ordinance. She feels that staff needs to look at this project as possibly being different from the 1994 interpretation from Council and possibly removing the deck from the list of the impervious surface.

Commissioner Hay commented that he is not sure if he agrees with the assumption that is being made that the deck is purely a visual issue and feels that a presentation and staff report is needed at another meeting on the full history and background of this particular issue of 1994.

Chair Nitafan asked if the applicant was aware of the new ordinance and if they knew their residence was non-conforming. Ms. Judd replied that they are aware now, but were not aware at the time the improvements were constructed.

Chair Nitafan asked how staff found out they were not in compliance with City regulations and Ms. Judd replied that the City received a complaint and followed up on it.

Chair Nitafan introduced the applicant.

Celina Camillo, 510 Vista Spring Court, said that on behalf of her family, she apologizes for being ignorant of the ordinance and did not have the intentions of disobeying the ordinance. She noted that her driveway is about 9% of the impervious surface of the lot and the house is 3% of the impervious surface of a 2.2-acre lot. She said that her family wanted amenities they could enjoy, not knowing that there was an ordinance. She only found out after her neighbor told her and since then, has done everything possible to follow the rules and regulations.

Not being a technical person, Mrs. Camillo was concerned and asked Don Peoples, Civil Engineer, to help her with the variance application. She pleaded with the Commission to give her justification on why the driveway should be allotted against her.

Don Peoples, Civil Engineer and representing the applicant, pointed out the residential plans for the audience. He noted that the site improvements are very modest for the area, and that the only thing that is out of whack is the driveway. He pointed out that the driveway is huge and is there for unique reasons. He feels that the engineer who designed the house did not do a good job of designing the common area, which could have been easily mitigated. He feels that the applicant is being penalized by the ordinance because this lot combines all of the limitations and natural conditions that are needed for a large area, and if it were built this way, they would have a larger impervious area allotment.

Mr. Peoples also noted that the neighbor who made the complaint has a 1.4-acre lot and is able to build a pool and add an addition to the house. He pointed out that the improvements the applicant would like to make are comparable to the neighbor. He pleaded with the Commission to approve the variance for the applicant since the improvements they want are considered to be modest and not anything above ordinary for the neighbor.

Commissioner Lalwani referenced lot 19 from the drawings and asked if the neighbor who complained lives at this lot and Mr. Peoples replied, "Yes".

Commissioner Hay commented that Mr. Peoples raised some concerns about the neighbor and asked staff to follow up. He asked if the driveway is fully on the applicant's property and if the neighbor has an easement that allows him to access the property.

Commissioner Hay stated that he doesn't understand why the applicant would get penalized for sharing the easement with the neighbor and asked what is the impervious surface of the neighbor's lot. Mr. Peoples agreed with Commissioner Hay's comments and mentioned that the easement is used as more of an access. He also pointed out that the neighbor is using the easement as storage for vehicles and construction equipment.

Commissioner Giordano commented that the homeowners association should be in charge of the common area. She also noted that on the deed to the house, the owner should have undivided interest in the common area. She concluded that staff might want to look at the common area and apply it to expanding the parcel size when looking at the impervious surface calculation.

Vice Chair Williams commented on the extra width of area that is in the driveway near the residence, and asked if this was a request from the City for emergency purposes. Ms. Judd confirmed that it does serve as a back up space for emergency vehicles. If a fire truck were to come up to the site to visit the neighboring parcel, the truck would be able to back up into this space and turn around.

Vice Chair Williams noted that if the land had been developed as a common area or public street with a cul-de-sac turn around, the whole area would be equivalent to a typical road. He noted that the road serves two homes and is over 150 feet long and has to provide room for fire vehicles.

Commissioner Lalwani agreed that the applicant and the neighbor should share 50/50 of the impervious surface area since they are sharing the road. Ms. Judd commented that if this parcel had not been serving access to the neighbor, it would have to have a minimum of 14 feet driveway width. It is staff's position to support deleting the 7 feet width, the fork that serves the neighboring parcel, and the emergency vehicle back-up area.

Mr. Peoples pointed out that staff has done everything logical to consider this driveway as a road. If it was considered a road, then it would be well within the limits of the ordinance. He would like the Commission to accept the variance as a unique lot.

Commissioner Galang asked the applicant if she was the first owner and Mrs. Camillo responded that she was the second owner.

Commissioner Galang asked the applicant when she moved into the house and Mrs. Camillo responded, "In the year 1995".

Commissioner Galang asked the applicant when were the improvements made to the house and Mrs. Camillo responded, "In the year 2000".

Commissioner Galang asked Mrs. Camillo if she hired a licensed contractor and she said, "No".

Commissioner Galang asked staff if the licensed contractor is responsible for the expansion and Ms. Judd replied that they are responsible for the construction, not the expansion.

Commissioner Galang asked if the contractors can be relied upon for knowing the rules and regulations and Ms. Judd replied that most of them do know the rules, but it is not wise to rely on the contractor. Ms. Heyden added that the property owner is ultimately responsible in either case.

Chair Nitafan pointed to a shaded area near the driveway and asked if the applicant would be in compliance if that area were deducted. Ms. Judd commented that if the applicant were to deduct the entire 21 feet of the driveway, up to the fork and the turnaround, then they would be in compliance.

In regards to the September 1992 hillside ordinance, Commissioner Giordano asked if a hillside project in 1994 had an interpretation that included adding wood decking to an impervious surface, would that automatically change impervious surface calculations in the ordinance for future applicants.

Ms. Faubion replied that an interpretation is presumably based on factual conditions that were raised at that time and staff can only speculate as to what some of those factors were, but do not know for sure. She went on to say that an interpretation is not binding on anybody and can be useful that something down the way has a very similar situation. The only way it can become binding in the future is if it were incorporated formally into the ordinance through a zoning ordinance amendment.

Commissioner Giordano asked if there is an ability to look at the variance process and consider this lot being unique in nature than any other hillside lots. She also asked if it could include common area that is not addressed in the ordinance.

Ms. Faubion commented that unless there was something stating that in the adopted ordinance, it would not be possible. The common area is a common area because sometimes it is unbuildable, or for other various reasons. She noted that often times the ordinance will inform the decision makers what that decision is, and unless the ordinance says the building area includes the site and share of the common area, then it is not possible.

Commissioner Giordano asked staff if they have looked at wood decks since 1994 for other hillside projects. Ms. Judd replied that since 1994, staff has consistently counted wood decking as impervious area per the Council interpretation.

Commissioner Giordano asked why the hillside ordinance was never changed to reflect that language. Ms. Heyden noted that staff chose to follow in the direction of Council.

Commissioner Hay asked if the property were legal non-conforming, would the applicant be able to remove coverage from one area to another, so that the net change is zero, and be allowed to do that without going through the variance process. Ms. Judd replied that if the impervious surface coverage area was removed through the direction of complying with the ordinance, then the non-conforming impervious area could not be replaced on the site, than the exceedance could not be exacerbated. Ms. Heyden also added that it would have to be reviewed by staff on a case-by-case basis, but would most likely require a variance.

Commissioner Hay asked if the extra 7 feet of driveway width and the turnaround for the fire trucks were removed, would the applicant still have to go through a variance process for the net gain or net loss. Ms. Judd explained that staff is proposing to deduct the extraneous driveway area from the site total. When that number is deducted from the impervious surface coverage total, the resulting number is less than what the ordinance allows. She went on to say that in order to comply with the ordinance, the applicant could still retain approximately 1,000 square feet of amenities, but would still have to remove some of the improvements.

In response to Chair Nitafan's question regarding deducting the turnaround, Ms. Judd replied that a portion of the existing driveway could be replaced with a grass-paved material that is structurally strong so that cars can park on it. This would require Fire Department approval.

Chair Nitafan asked if after those deductions, would the applicant be allowed to put in a swimming pool. Ms. Judd replied that if the applicant replaced a certain impervious area and if the fire department approved it, then staff would support it.

Regarding the 1994 Council interpretation, Mr. Peoples noted that if the deck was part of a second floor balcony, then it is not considered an impervious surface. Ms. Judd confirmed this.

Mrs. Camillo referred to the drawings and noted that her deck is elevated and that it is on the kitchen and bathroom deck.

Commissioner Hay commented on the deck and pointed out that the interpretation should be looked at. Commissioner Hay suggested that staff take a look at the property, the decking, the ordinance, and make sure that we are in compliance and to work with the applicant on converting some of their impervious surface coverage.

**Public Hearing to be
continued to September 10,
2003.**

Motion to continue the public hearing to September 10, 2003.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**2. USE PERMIT
AMENDMENT NO. P-**

UA2003-4 *(Continued from August 13, 2003)*: A request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation to 1:00 A.M. on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90 S. Abel Street without adding required parking for these new uses at Abel Plaza. *Applicant: Young Thai (Royal City Restaurant).*

Chair Nitafan opened the public hearing on Agenda Item No. 2.

Staci Pereira, Assistant Planner, presented a request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation to 1:00 a.m. on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90 S. Abel Street without adding required parking for these new uses at Abel Plaza, zoned MXD-TOD - Mixed Use with Transit Oriented Development overlay, and recommended approval with conditions based on the findings in the staff report.

Ms. Heyden pointed out the cover memo from Mr. James Lindsay to the Commission that discusses several communication letters from the City Attorney and the attorney representing the property owner. There seems to be a dispute between the tenant, the ground lessee, and the property owner. Based on the City Attorney's opinion, staff believes that the ground lessee, who has signed the application for the Use Permit, has control over the improvements of the site. Staff believes they have processed the application with the proper authority.

Regarding the applicant, Commissioner Hay mentioned his concerns with what may potentially be housing in the area. If housing goes into that area, then he recommends double doors be used as a mitigation measure so the noise doesn't bother future neighbors. He would like to add a condition stating this.

Ms. Pereira commented that a condition could be added if future complaints are received, which would be brought back to the Commission to be reviewed. With that, Commissioner Hay suggested that a condition regarding double doors be added in staff's recommendation.

Ms. Heyden added new special condition No. 22 which reads the following:

- 22. If at anytime an adjacent property is redeveloped or developed as a residential use, double doors shall be installed immediately at the business entrance to prevent any noise impacts to the adjacent residential uses.*

In regards to the staff report, Vice Chair Williams asked about citations to the property owner and asked if this has anything to do with previous signage issues. Ms. Pereira explained that there have been violations to the zoning code, Neighborhood Beautification Ordinance and the sign ordinance. The history of sign ordinance violations at this site are handled with the business owners, not the property owner. Notices have been sent out to the business owners that have been using temporary signs. She went on to say that other violations regarding site improvement violations of the original approval include missing landscaping, a rear wall that was supposed to be replaced, missing metal doors on the trash enclosure and lighting alterations.

In response to Vice Chair Williams' question regarding the fencing issue with Kentucky Fried Chicken (KFC) and the applicant, Ms. Pereira responded that there was an agreement with the current applicant and KFC and that a chain link fence went up.

Vice Chair Williams noted his concerns with the busy parking area where there might be very young people who might not be in close supervision and also problems associated with parking lot improvements. Ms. Pereira noted that there are 15 trees missing and the trees will have to come back as a revised landscape plan to be reviewed by the Planning Commission.

Chair Nitafoan pointed out a handout from the applicant and noted that the business hours on Saturday are from 5 p.m. to 10 p.m., but the staff report notes the hours on Friday and Saturday to be until 1 a.m. Ms. Pereira explained that the handout was submitted by the applicant in January and the hours have been changed to 1 a.m.

Chair Nitafoan mentioned his concerns that if this application is approved for entertainment and alcohol and extended hours until 1 a.m., this is going to set a precedence for other restaurants to apply. Ms. Heyden explained that the serving of alcohol and entertainment requires a use permit, and if the Planning Commission denied applications in the past, it was because of the applicant's neighborhood location, or not sufficient parking to serve more intense uses being added to the restaurant. She noted that restaurants could still apply for a use permit, which will be evaluated on their site characteristics and adjacent neighborhood, and may be supportable by staff.

Ms. Pereira assured the Commission that this restaurant cannot turn into a nightclub due to certain limitations that would prevent it from occurring such as serving food all night long in conjunction with entertainment and not being capable of meeting building and fire requirements.

Commissioner Galang referenced special condition No. 8, which reads as follows

8. *Within six (6) months after the live entertainment begins (i.e. upon certificate of occupancy issuance), a public hearing and review by the Planning Commission shall occur to assess any concerns related to noise, security, safety, and parking issues. The following items will need to be performed and submitted by the applicant for this review:*

- a. A seven (7) day parking study during the hours of operation;*
- b. Verification of food and alcohol sales receipts; and*
- c. Verification that private security was provided on Friday and Saturday nights.*

The applicant shall be responsible for all fees and submittal requirements associated with this review.

Commissioner Galang asked if the project would have to be reviewed by the Commission if there are no problems cited within six months. Ms. Pereira explained that Item No. 8 is a condition of approval, which requires it to be analyzed. If none of these factors turn out to be a problem, then it will be noted, receipted and filed, but the review will need to occur in order for these to be looked at.

Ms. Heyden noted a minor change for Condition No. 10 and amended the condition to read as follows:

10. The business owner shall post signs in English (and other applicable languages such as Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a Certificate of Occupancy.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

Motion to approve Use Permit Amendment No. P-UA2003-4 with added special condition No. 22 and revised special condition No. 10 as noted above.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

Kit Faubion was excused at 8:51 p.m.

IX.

UNFINISHED BUSINESS

Chair Nitafan introduced Agenda Item No. 4 under Unfinished Business.

3. VESTING MAJOR TENTATIVE MAP (P-MA2003-2): Consider street names for proposed new cul-de-sac with 19-lot single-family residential subdivision at 1405 Kennedy Drive (APN 029-41-024).

Due to conflict of interest, Commissioner Sandhu abstained from voting and recused himself from the dais at 8:51 p.m.

Annelise Judd, Assistant Planner, presented a follow up report from the August 13, 2003 meeting to consider street names for a proposed cul-de-sac within a 19-lot single-family residential subdivision at 1405 Kennedy Drive. These names were taken from the City's list of potential street names that have historic significance and are listed as follows:

- Machado - The Machado family, one of several area families of Portuguese descent, ranched approximately 40 acres of apricot orchards near Jacklin Road and Russell Lane. Tony Machado ranched this area during the 1940s-1960s.
- Topham - Edward Topham was a Milpitas pioneer in the 1860s. He ran a wagon and agricultural implements factory, and served as Justice of the Peace during the 1870s. Henry Topham was a grain merchant during the 1880s, and Frank H. Topham served as Justice of the Peace in the 1910s.

- Thompson - Ruth M. Thompson was a school teacher at Calaveras School in the 1880s.
- Fanyon Court – Does not have historical significance but staff suggested the name since the street that dead ends into the new cul-de-sac is Fanyon.

Commissioner Hay congratulated Commissioner Giordano for coming up with the idea of suggesting a street name. He suggested the name Topham Court since the family were pioneers and served the community.

Commissioner Giordano suggested that she liked the name Machado since it was in closest proximity to this particular court and feels it has more historical significance.

Commissioner Lalwani asked how did the Machado name come about. Ms. Judd replied that it came from the Machado widow who made the request in the 1990's for her family to have a street named after them (Staff found the information from a former employee). Commissioner Lalwani suggested the name Fanyon Court to make it more practical, but doesn't really have a preference to what name is chosen.

Vice Chair Williams suggested Topham to give recognition to the struggles of pioneers and for making part of Milpitas.

Commissioner Galang and Commissioner Nitafan agreed with the name Topham and consensus was reached.

Motion to recommend that Topham be recommended to the Council as the naming for the new cul-de-sac.

M/S: Williams/Hay

AYES: 6

NOES: 0

X. NEW BUSINESS

Chair Nitafan introduced Agenda Item No. 5 under New Business.

Commissioner Sandhu returned to the Council Chambers at 8:58 p.m.

4. DISCUSSION OF NEW ANTENNA REGULATIONS:

Presentation of the impact on existing, residential satellite dishes resulting from the wireless communication facilities regulations adopted May 20, 2003. *Presenter: Tambri Heyden, (408) 586-3280.*

Tambri Heyden, Acting Planning and Neighborhood Services Director, presented a discussion on the impact of existing residential satellite dishes resulting from the wireless communication facilities regulations adopted on May 20, 2003. She noted that no action is required from the Commission.

Ms. Heyden explained that antenna regulations were adopted on May 20, 2003 and became effective 30 days after. To be exempt from those new regulations, an existing satellite dish would have to be considered legally existing. For it to be considered legally existing, a building permit would have to be required and the regulations at that time would classify the dish as an accessory structure.

Ms. Heyden pointed out that the satellite would need to be no closer than 3 feet to any side of the rear property line and a building permit is required depending on the height. She went on to say that any structure over 6 feet in height requires a building permit.

In order to make a legally existing residential satellite dish conforming, Ms. Heyden explained that the satellite dish would have to be 1 meter or less in diameter, or meet the following standards:

- Height
- Attachment
- Compliance with wind loading specifications
- Setbacks
- Location that is precluded from being located between the house and public right away
- Number of antennas
- Color restrictions

If the satellite dish is greater than 1 meter in diameter and doesn't meet the above requirements, then it has to go through the use permit process to legalize it.

Commissioner Hay asked how does the public and satellite dish companies know that the City has requirements. Ms. Heyden commented that staff has not done any outreach on this yet and will look into it.

XI. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:02 p.m. to the next regular meeting of September 10, 2003.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary